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Supreme Court, U.S.
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No. 93-1754

IN THE

Supreme Court of the United States

October Term, 1993

ARDESHIR DANESHMAND

Petitioner/Appellant,

v.

R. B. HAZARD, INC.,

CENTRAL FENCE OF CNY, INC., and

THOMAS DeSANTIS, JR. t/a FENCE WORLD,

Respondents/Appellees.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

REPLY BRIEF

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REPLY BRIEF

In their brief, the respondent federal contractors argue that the Due Process and Equal Protection

issued raised by Daneshmand's petition should not be considered by this Court since they were not raised below when Daneshmand moved the Fourth Circuit of Appeals for Reconsideration or alternatively for a Hearing En Banc.

Daneshmand did raise this issue below. In concluding his post-decision motions Daneshmand argued:

> ``Should these motions be denied, Daneshmand will have been through a federal trial and a full review without his case appearing anywhere in published federal jurisprudence. In light of the strength of his case and the monumental legal rulings made in it, that is both suprising and disturbing. From his prospective, it now seems the case falls into a special category; a category where the established law does not apply, but yet remains unchanged. Such a result is the antithesis of justice and

equality before the law.''

This is the very constitutional rationale again argued before this Court.

Further, the nature of this issue precluded raising the point until after the Fourth Circuit opinion in the case had been issued. Daneshmand has no way of predicting that this earth shattering opinion would be issued ``unpublished''. The two cases cited by the respondents in their brief did not involve failure to raise issues in post-decision motions. The criteria for filing such motions are narrow unlike the potential grounds for appeal to this Court. Indeed, such motions need not

even be filed in order to retain the opportunity to appeal for a Writ of Certiorari from this Court.

CONCLUSION

For these reasons also, the Petition for Writ of Certiorari should be granted in this case.



STEPHEN MERRILL
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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Reply Brief was mailed to all counsel of record this 15th day of June, 1994.



STEPHEN MERRILL
Counsel for the Petitioner